

**25.004 Reporting of acquisition of end products manufactured outside the United States.**

(a) In accordance with the requirements of 41 U.S.C. 10a, the head of each Federal agency must submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture end products outside the United States in that fiscal year.

(b) This report will be partially based on information collected from offerors using solicitation provision 52.225-18, Place of Manufacture (and its commercial item equivalent in 52.212-3, Offeror Representations and Certifications—Commercial Items). For purposes of this report, the criteria established in the law is only whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components (see 25.001(c)).

[71 FR 57377, Sept. 28, 2006, as amended at 72 FR 46327, Aug. 17, 2007]

**Subpart 25.1—Buy American Act—Supplies****25.100 Scope of subpart.**

(a) This subpart implements—

(1) The Buy American Act (41 U.S.C. 10a - 10d);

(2) Executive Order 10582, December 17, 1954; and

(3) Waiver of the component test of the Buy American Act for acquisitions of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C 431.

(b) It applies to supplies acquired for use in the United States, including supplies acquired under contracts set aside for small business concerns, if—

(1) The supply contract exceeds the micro-purchase threshold; or

(2) The supply portion of a contract for services that involves the furnishing of supplies (e.g., lease) exceeds the micro-purchase threshold.

[74 FR 2722, Jan. 15, 2009]

**25.101 General.**

(a) The Buy American Act restricts the purchase of supplies that are not domestic end products. For manufactured end products, the Buy American

Act uses a two-part test to define a domestic end product.

(1) The article must be manufactured in the United States; and

(2) The cost of domestic components must exceed 50 percent of the cost of all the components. In accordance with 41 U.S.C. 431, this component test of the Buy American Act has been waived for acquisitions of COTS items (see 12.505(a)).

(b) The Buy American Act applies to small business set-asides. A manufactured product of a small business concern is a U.S.-made end product, but is not a domestic end product unless it meets the component test in paragraph (a)(2) of this section.

(c) Exceptions that allow the purchase of a foreign end product are listed at 25.103. The unreasonable cost exception is implemented through the use of an evaluation factor applied to low foreign offers that are not eligible offers. The evaluation factor is not used to provide a preference for one foreign offer over another. Evaluation procedures and examples are provided in Subpart 25.5.

[64 FR 72419, Dec. 27, 1999, as amended at 74 FR 2722, Jan. 15, 2009]

**25.102 Policy.**

Except as provided in 25.103, acquire only domestic end products for public use inside the United States.

**25.103 Exceptions.**

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American Act:

(a) *Public interest.* The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(b) *Nonavailability.* The Buy American Act does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably